IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/07/2003

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THE HONOURABLE MR.JUSTICE M.KARPAGAVINAYAGAM

C.R.P. (P.D.) No.1260 of 2003
and
C.M.P.No.8909 of 2003

1. Balakrishnan
2. Rukmani .. Petitioners

-Vs-

Chandrasekharan .. Respondent

Civil Revision Petition filed under Section 115 C.P.C. against order dated 8-4-2003 in O.S.No.236 of 2002 on the file of the Principal District Munsif Court, Bhavani, Erode.

!For petitioner: M/s.T.Muruga Manickam

^For Respondent : ---

:ORDER

A partition panchayat muchalika dated 23-12-2001 was sought to be marked as defence exhibit on behalf of the petitioners/defendants. The respondent/plaintiff objected to the same, as it is inadmissible under the Indian Registration Act and Indian Stamp Act. Accepting the said objection, the trial Court dismissed the prayer of the petitioners/defendants to mark the said document as an exhibit. Hence, this civil revision petition by the petitioners/defendants.

2. The respondent/plaintiff filed the suit for permanent injunction against the petitioners/defendants. The respondent/plaintiff is the younger brother to the first petitioner. According to the respondent/plaintiff, mother Ramayammal settled the suit property in his favour and that he was put in possession. Since the petitioners attempted to interfere with his possession, he filed the suit.

3. The suit was contested by the petitioners that the suit property was ancestral property and the subject matter of partition panchayat muchalika and therefore, the mother Ramayammal had no right to settle the property in favour of the respondent/plaintiff through the settlement deed.

4. At the time of trial, the partition panchayat muchalika dated 23-12-2001 was put in evidence through D.W.2. Admittedly, the said document is an unregistered and unstamped document. The respondent/plaintiff opposed the application on the ground that the document is unstamped and unregistered

and the same was sought to be marked, which is prohibited under the Indian Stamp Act and Indian Registration Act and the same was not admissible, especially when the defendants claim right in the suit property on the basis of the said document. It was contended by the petitioners/defendants before the trial Court that the same is admissible, because the defendants sought to use the same only for collateral purpose. However, the trial Court dismissed the application.

5. Assailing the impugned order, learned counsel for the petitioners would reiterate the arguments advanced before the trial Court on the strength of a decision of this Court reported in 2001 (1) M.L.J. 1 (LAKSHMIPATHY Vs. CHAKRAPANI REDDIAR) and a decision of the Supreme Court reported in 2001 (3) S.C.C. 1 (BIPIN SHANTILAL PANCHAL Vs. STATE OF GUJARAT) and submit that the partition panchayat muchalika, the document in question, would reveal the past transaction, wherein the properties were already divided and in continuation of such partition, the property which was omitted in such partition, was discussed in the said document. Therefore, no transfer of title takes place by virtue of the said document and consequently, the document ought to have been admitted for collateral purpose.

6. I have carefully considered the submissions made by learned counsel for the petitioners and gone through the impugned order.

7. It is settled law that if the family arrangement is reduced to writing and it purports to create, declare, assign, limit or extinguish any right, title or interest of any immovable property, it must be properly stamped and duly registered as per the Indian Stamp Act and Indian Registration Act. If the family arrangement is stamped, but not registered, it can be looked into for collateral purposes. A person cannot claim a right or title to a property under the said document, which is being looked into only for collateral purpose. A family arrangement which is not stamped and not registered, cannot be looked into for any purpose, in view of the specific bar in Section 35 of the Indian Stamp Act. A document must be read as a whole. As to the nature of transaction under the document, it cannot be decided by merely seeing the nomenclature. Mere usage of past tense in the document should not be taken indicative of a prior arrangement. The expression "collateral purposes" is no doubt a very vague one and the Court must decide in each case whether the parties who seek to use the unregistered document for a purpose which is really a collateral one or as is to establish the title to the immovable property conveyed by the document. But by the simple devise of calling it "collateral purpose", a party cannot use the unregistered document in any legal proceeding to bring about indirectly the effect which it would have had, if it is registered. When the parties reduce the family arrangement in writing with the purpose of using that writing as proof of what they had arranged and where the arrangement is brought about by the document as such, that the document would require registration as it is, then that it would be a document of title declaring for future what rights in what properties the parties possess.

8. The above principles have been laid down in 2001 (1) M.L.J. 1 (cited supra). If we apply there principles to the present facts of the case, this Court is unable to persuade itself to accept the contention of learned counsel for the petitioners that the said document was sought to be marked only for collateral purpose.

9. A perusal of the document would refer to both the past arrangement

and the arrangement made on the date of the partition panchayat muchalika. It is also noticed from the written statement filed by the defendants that the right in the property was claimed by the defendants on the basis of this document. The relevant portion of the written statement is as follows:-
"5. After her death the plaintiff and the defendants enjoyed those properties along with other properties. They felt it inconvenient to continue to be joint and they wanted to partition the entire properties orally by themselves with the help of mediators to assist them. On 23-12-2001 a final decision in the oral partition was effected in the presence of mediators including the suit property. Among other properties the suit property was also divided."

10. In view of the above stand taken by the defendants in the written statement, it cannot be contended that this document was sought to be marked only for collateral purpose, whereas it clear that they claim right in the property on the basis of this document.
11. The observations made by the Supreme Court in 2001 (3) S.C.C. 1 (cited supra) would relate to speedy disposal of the criminal cases whenever an objection is raised regarding the admissibility of any material or document. But those observations would not apply to the present facts of the case, in view of the prohibition contained in the Indian Registration Act and Indian Stamp Act. 12. Hence, I do not find any infirmity in the impugned order. The civil revision petition is dismissed at the admission stage itself. Consequently, C.M.P.No.8909 of 2003 is also dismissed.

Index: Yes
Internet: Yes
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To
The Principal District Munsif,
Bhavani, Erode District.

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